

MEMORANDUM OF UNDERSTANDING

BETWEEN AND FOR THE

CITY OF FRESNO

AND

FRESNO CITY FIREFIGHTERS ASSOCIATION

LOCAL No. 753

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS

A.F.L.C.I.O.

(Fire Management - Unit 10)

FISCAL YEARS

2004 - 2005

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LEGEND

* * *	= deleted old language
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[§§ deleted]	= two or more sections/subsections deleted
bold type	= new language

ARTICLE I

PREAMBLE

A. PURPOSE

This Memorandum of Understanding, hereinafter MOU, entered into between the City of Fresno, hereinafter referred to as the City, and Fresno City Firefighters Association Local 753, International Association of Fire Fighters, AFL-CIO, hereinafter referred to as the Association, has as its purpose: To establish wages, hours, and other terms and conditions of employment for the members of this Unit.

B. DEFINITIONS

Unless the particular provision or the context otherwise requires, and except to the extent that a particular word or phrase is otherwise specifically defined in this MOU, the definitions and provisions contained in Sections 2-1501, 2-1601, 2-1701, and 2-1903 of the Fresno Municipal Code (hereinafter FMC) shall govern the construction, meaning, and application of words and phrases used herein. The definition of each word or phrase shall constitute, to the extent applicable, the definition of each word or phrase which is derivative from it, or which it is a derivative, as the case may be.

C. GOVERNING LAWS

The legal relationship between the City and its employees and the City and the Association is governed by **Chapter 10 of Division 4 of Title I of the** Government Code (Section 3500 et seq., commonly known as the Meyers-Milias-Brown Act), **applicable provisions of the Public Employment Relations Board (PERB)**, Chapter 4 of Part 7 of Division 2 of the California Labor Code (Sections 1960, 1961, 1962, and 1963), **as may be amended from time to time** and Article 19 of Chapter 2 of the FMC. * * * In the event of **any** conflict between said laws and this MOU, or in the event of conflicts in interpretation, said laws shall govern.

ARTICLE II
EMPLOYEE RIGHTS

A. GENERAL * * *

[§§ deleted]

The rights of employees, except as expressly modified herein, are as set forth in FMC Section 2-1904. Execution of this MOU by the Association shall not be deemed a waiver of any Association or employee right unless the right is clearly or explicitly modified or restricted herein.

B. EMPLOYEE RESPONSIBILITIES

All employees in the Fire Management Unit, hereinafter Unit, acknowledge that the City shall consider the positions and proposals of the Association as the meet and confer positions and proposals of all employees, individually and collectively, in said Unit.

C. NONDISCRIMINATION

The provisions of this MOU shall apply equally to and be exercised by, all employees **consistent with state and federal nondiscrimination statutes. City practices and policies will be consistent with the requirements mandated by applicable federal and state nondiscrimination statutes * * *.**

ARTICLE III
CITY RIGHTS

A. GENERAL

1. The rights of the City include those rights enumerated in FMC Section 2-1905, as the same may be amended from time to time.

[§§ deleted]

[§ deleted]

2. All other rights formerly or presently enjoyed by or vested in the City on the effective date of this MOU and not mentioned in paragraph 1.(a) are retained by and reserved to the City **unless explicitly waived by the City by resolution of the Council or by Council approved MOU.**
3. Nothing in this MOU shall be construed as delegating to others the authority conferred by law on the City, or in any way abridging or reducing such authority.
4. This MOU is not intended to restrict consultation in good faith with the Association regarding matters within the right of the City to determine.
5. This MOU shall be construed as requiring the City to follow its provisions in the exercise of the authority conferred upon the City by law, except that this clause shall not be deemed to be a grant of authority to sue any person, including the Association, not otherwise existing.

ARTICLE IV
RECOGNITION

A. ASSOCIATION RECOGNITION

The City acknowledges the Association as the recognized employee organization representing the Unit, and therefore, shall meet and confer in good faith promptly upon request by the Association and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on a successor MOU at least **(1)** one week prior to the last regular **City** Council meeting at which the City budget must be adopted for the ensuing fiscal year **in order to meet the June 30 deadline specified in the City Charter.** In order that the meet and confer process includes adequate time for **full consideration of the proposals of both parties and for** the resolution of any impasse, the City will accept proposals from the Association as early as March 1, **2005 * * * .**

B. RECOGNITION OF UNIT DESCRIPTION

The Fire Management Unit consists of all employees holding a permanent position, as defined in FMC Section 2-1601.1(p)(4), in one of the following classes, **as * * *** such Unit may be modified from time to time *** * * pursuant to the provisions of the** FMC:

Fire Battalion Chief
Fire Bureau Chief

C. CITY RECOGNITION

The Association recognizes the City Manager of the City, or such other person as may be designated in writing, as the designated representative of the City **pursuant to FMC Section 2-1914**, and shall meet and confer in good faith promptly upon request by the City and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on a successor MOU at least **(1)** one week prior to the last regular council meeting at which the City budget must be adopted for the ensuing fiscal year **in order to meet the June 30 deadline specified in the City Charter. * * ***

D. RECOGNITION OF MUTUAL OBLIGATION

The Association and the City recognize and acknowledge their mutual obligation and responsibility to effectuate the purposes set forth in, and to adhere to the conditions and clauses set forth in this MOU.

E. INFORMATION TO ASSOCIATION

1. The City shall provide to the Association:
 - (a) Changes to the Salary Resolution.
 - (b) Changes to Job Specifications for classes in this Unit.
 - (c) Changes to the Administrative Order Manual that affect employees in this Unit.
 - (d) Changes to the Fire Department organizational structure that affect employees in this Unit.
 - (e) Additions or deletions of classes that affect this Unit.
2. The Fire Department shall provide:
 - (a) Copies of written departmental policies, rules and regulations prior to implementation, on matters which directly affect employees in this Unit, except in an urgent situation, in which case the City shall discuss the issue with the Association as soon as possible thereafter.
 - (b) An opportunity to discuss matters of interest to employees in this Unit, directly with the Association or through committees or advisory bodies created for that purpose.

F. * * * LOCKOUT AND STRIKE

1. No lockout of employees shall be instituted by the City during the term of this MOU.

[§ deleted]

2. **Nothing contained in this section is intended to waive or infringe upon any rights guaranteed to any party or entity under the Meyers Milius Brown Act (MMBA), Government Code §§ 3500, et seq., or any other applicable State or Federal law.**

3. **Participation by an employee in an unlawful strike or work stoppage shall subject the employee to disciplinary action, up to and including removal from City service. Participation by an employee in a lawful strike or work stoppage is protected activity and will not subject the employee to disciplinary action.**

G. UNILATERAL ACTION

In the event the meet and confer process for a successor MOU results in an impasse, as defined in the FMC, the City shall not take unilateral action regarding wages, hours, and other terms and conditions of employment prior to the completion of the impasse procedures outlined in the FMC.

ARTICLE V

SCOPE OF REPRESENTATION

A. GENERAL

"Scope of representation" shall be as defined in FMC Section 2-1903 (w), as follows:

"Scope of representation" means all matters relating to employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment. Employee rights, as set forth in **FMC** Section 2-1904, and City rights as set forth in **FMC** Section 2-1905 (a), are excluded from the scope of representation.

B. GRIEVANCE PROCEDURE

1. A grievance is a dispute concerning the interpretation or application of any existing City rule or regulation governing personnel practices or working conditions, including this MOU. A grievance involves the claimed misapplication or misinterpretation of a rule or regulation relating to an existing right or duty; it does not relate to the establishment or abolition of a right or duty. This procedure shall not apply to any dispute for which there is another established resolution procedure, including but not limited to, appeal to the Civil Service Board, Retirement Board, or unfair employer-employee relations charge fact-finding procedure.
2. A written grievance must set forth the rule or regulation claimed to have been violated, describe the specific incident or circumstances of the alleged violation, and specify the remedy sought. Any dispute between the parties as to the grievability of an issue or as to whether the requirements of this procedure have been met shall be presented to the Grievance Advisory Committee. The Committee shall rule on the dispute before proceeding with the hearing.
3. The Association may represent employees covered by this MOU on a grievance under the grievance procedure.
4. An Association Officer designated by the Association in writing shall be excused from regular duties without loss of compensation for such time as is necessary to attend and represent the grievant at a grievance hearing, beginning at the first level of supervision.

5. The procedure and sequence in filing and processing a grievance shall be as follows:
- (a) The grievant and/or Association representative shall discuss the grievance with the grievant's immediate supervisor before a written grievance may be filed.
 - (1) If the grievance is not settled through this discussion, it either may be discussed with the next higher supervisor or a written grievance may be filed with the grievant's immediate supervisor. A written grievance must be filed within twenty-one (21) calendar days from the time the grievant becomes aware or should have become aware of the issue or incident giving rise to the problem.
 - (2) Upon receipt of a written grievance, the immediate supervisor shall give the grievant a written reply within nine (9) calendar days.
 - (3) Prior to moving to the next level, the grievance shall be referred to the Association for review and recommendations.
 - (b) Should the grievant not be satisfied with the answer received from the immediate supervisor, the grievant may within nine (9) calendar days file an appeal to the department head. The department head shall have twenty-one (21) calendar days after receipt of the appeal to review the matter, investigate and provide a written answer to the appeal, explaining clearly the decision or proposed action and reasons thereof. The grievant and/or representative shall have the opportunity, if desired, to present to the Fire Chief the position regarding the grievance.
 - (c) The City and Association may mutually agree to waive steps 1 and 2 and proceed directly to hearing by the Committee when the issue is one over which the grievant's supervisor or department head has no jurisdiction.
 - (1) If the grievant is not satisfied with the decision of the department head, the grievant may within nine (9) calendar days after receipt of the written reply, file a request for a review of the department head's decision to the Grievance Advisory Committee.
 - (2) The City and the Association may agree to seek resolution of the grievance through mediation using the services of the State

Conciliation Service, prior to hearing by the Grievance Advisory Committee. Time limits for processing of grievance are automatically extended for so long as mediation is in process. The fees and expenses of the mediator shall be paid half by the City and half by the Association.

- (3) From the date a grievance otherwise meeting all criteria for the filing and processing of a grievance reaches the Labor Relations Division, the Grievance Advisory Committee will attempt to convene within thirty (30) calendar days in order to hear the grievance.
- (4) The grievance Advisory Committee shall conduct a hearing and make a recommendation to the City Manager within thirty (30) calendar days of their last meeting.

The Grievance Advisory Committee shall be bound by the language of the MOU, City Administrative Orders, ordinances, rules and regulations, and department rules and regulations consistent therewith in considering any issue properly before them. The Grievance Advisory Committee shall be expressly confined to the precise issues submitted and shall have no authority to consider any other issue not so submitted. The Grievance Advisory Committee may not recommend changes in established wages or benefits, nor recommend the payment of back wages or benefits to a date prior to the date of the incident.

- (5) The Grievance Advisory Committee shall be composed of three members, one selected by the Association, one selected by the City and one member mutually agreed to by the parties.
- (d) The City Manager shall review the decision of the department head and recommendations of the Grievance Advisory Committee and shall render a written decision to the grievant within twenty-one (21) calendar days after receipt from the Grievance Advisory Committee.
- (e) Failure of the grievant to file the grievance or an appeal within the specified time limit for any step of the procedure shall constitute an abandonment of the grievance.

Failure of the responsible supervisor or official of the City to render a decision within the specified time limit established by this procedure shall automatically move the grievance to the next higher level for

action, without action required of the grievant. All time limits herein may be extended by mutual agreement of the parties.

ARTICLE VI

*** * * DUES DEDUCTION**

A. GENERAL

- 1. Except as expressly modified herein, the procedures governing dues deductions, agency shop, hold harmless obligations, religious and conscientious objections, and financial reporting requirements, shall be as provided in Government Code Section 3502.5, as the same may be amended from time to time.**
- 2. Any appeal of a termination resulting from the application of this Section shall be processed in accordance with the provisions of the FMC.**

B. DUES CHECKOFF

Rules governing dues checkoff are set forth in FMC Section 2-1919, as the same may be amended from time to time.

- 1. The City shall deduct the dues or benefit premiums, or both, upon proper authorization by Association members in the Unit.**
- 2. If a member in the Unit desires the City to deduct dues or benefit premiums from the member's paycheck, a deduction authorization shall be made upon a Dues Deduction Authorization card * * *.**
- 3. The service fee shall consist of, and not exceed, the standard initiation fee, periodic dues, and general assessments of the Association for the duration of this MOU. The Association shall not require a non-member of the Association to make any payment to a Political Action Committee, nor shall the Association include as a part of the service fee any amount to be used for political purposes.**
- 4. In the event an employee covered hereunder does not authorize deduction of either Association dues or a service fee from the employee's paycheck and does not make such payment directly to the Association, the Association shall provide a certification, signed by the Association President, to the City of such failure. Prior to such certification, the Association shall notify the employee of its intent to provide certification to the City, and give the employee an opportunity to respond within thirty (30) days. Certification shall be in the form of**

a letter from the Association to the City. Such failure by an employee shall constitute grounds for termination by the appointing authority.

5. A Dues Deduction Authorization card may be revoked by a member in the Unit, and the dues or benefit deduction canceled, only during the months of November and December of any year.

If an Association member in the Unit desires to revoke * * * a dues deduction authorization card, a dues deduction revocation shall be made upon a Dues Deduction Revocation card * * *.

Dues Deduction Authorization and Revocation cards are available at the Finance * * * **Department**, Payroll and the **Personnel Department** * * *.

6. Upon written authorization by a retired member of the Association, the City shall deduct Association deductions, credit union deductions and benefit fund deductions from the retirement check of such retired member and forward such deductions as designated, within 14 days.

C. EXCEPTIONS TO DUES DEDUCTION AUTHORIZATION CARD

1. The Association member's earnings must be sufficient after other legal and required deductions are made to cover the amount of the dues deduction authorized. When a member is a nonpay status for an entire pay period, no dues deduction shall be made from future earnings to cover that pay period, nor will the member be * * * **required** to deposit * * * the amount which would have been deducted if the member had been in a pay status during the pay period. In the case of a member who is a nonpay status during only a part of the pay period and * * * **whose** salary is * * * **insufficient** to cover other legal and required deductions, no dues deduction or deposit shall be made.

D. DUES DEDUCTION CHECK

1. The deduction check covering all such deductions shall be transmitted to: Fresno City Firefighters Association Local No. 753, 710 R Street, Fresno, California, 93721, or such address as may be provided to the City by the Association.
2. The deduction check shall be made in favor of: Fresno City Firefighters Association Local No. 753, and shall be transmitted no later than 14 days from the date of deduction.

ARTICLE VII

COMPENSATION AND BENEFITS

A. GENERAL

All economic benefits, provided by Council ordinance or formal Council resolution and not otherwise clearly and explicitly modified or restricted in this MOU, shall be continued without alteration during the term of this MOU.

B. SALARIES

1. **Except for movement between steps, there shall be no salary increases in FY04 (Exhibit I, Table I).**
2. **Effective July 1, 2004, step adjustments for the class of Fire Battalion Chief shall be realigned as reflected in Exhibit I, Table II, provided that no incumbent at any step in any class shall suffer a loss in salary. Should the realigned wage be less than the prior wage, incumbents shall retain the prior wage until moving to the next step.**

[§§ deleted]

3. The class of Fire Bureau Chief shall be placed at the E-2 executive pay range pursuant to the rules and regulations established in **Article VII, Section K.**
4. The class of Firefighter Recruit will not be used for retirement calculations under the Career Rank Average as defined under FMC Section 2-1700, *et. seq.*

C. LIFE INSURANCE AND DISABILITY COVERAGE

The City shall provide Life Insurance and Long Term Disability Insurance for members of this Unit in the amounts and formulas currently provided.

D. HEALTH AND WELFARE

The City and the Association agree that the Fresno City Employees Health and Welfare Trust has the **sole** authority to determine the benefits that will be provided during the term of this MOU. The sole responsibility of the City under this clause is to provide a set dollar amount to be contributed to the Trust on behalf of the employees represented by the Association. **Effective July 1, 2004, the City's contribution will be \$541.50 per month per employee, and * * * the employee ***

*** * may opt** to contribute the amount necessary to make up the difference **of the premium established by the Fresno City Employees Health and Welfare Trust Board**, through payroll deductions, **or accept a reduced coverage amount.** * * *

The parties also agree to work collectively in conjunction with their Board representatives to research and recommend potential cost-saving measures for the Health & Welfare Trust, which may include a choice of health program options based on individual need or preference, including a reduced option equivalent to the City's premium contribution, a separate rate for single employees with no dependents, or other flex plan programs; mandatory generic mail order drug maintenance for employees who require prescription drug therapy for any period of 90 days or more; or other measures that may be identified as this work progresses.

E. UNIFORM ALLOWANCE

[§§ deleted]

Effective July 1, **2003** * * *, employees shall receive * * * **\$790.00** per year as a uniform purchase and maintenance allowance, * * * and paid **in semi-annual installments on the last pay period in December and June** * * *.

F. PREMIUM PAY

1. Working Additional Full or Partial Shifts

- (a) * * * **Consistent with the Superior Court Permanent Injunction issued on December 10, 1980, the parties agree that** employees occupying the class of Fire Battalion Chief may work full or partial 24-hour shifts on a voluntary basis. If an employee works a full or partial 24-hour shift, in addition to any shift which is a part of the employee's normal work schedule, the employee shall be paid **premium pay in the sum of * * * \$848** for such full shift, or an amount which is proportionate to the fraction of a shift worked which is at least 4 hours in length (Formula: full shift amount **\$848** ÷ 24 full shift hours = \$ amount to be applied to partial shifts worked which must be at least 4 hours in length). **Excluded from such compensation are the following assignments.**

- (1) **Attendance at staff meetings.**
- (2) **Appearances at Civil Service hearings.**
- (3) **Court appearances.**
- (4) **Appearances at grievance or Skelly hearings.**

- (5) **Administrative duties performed while off duty as defined in Instruction No. 128, as may be modified by mutual agreement of the parties.**

[§§ deleted]

- (b) **Excluding those assignments enumerated in 1. (a), above, Battalion Chiefs on a 56-hour work schedule may also work, in addition to their normal work schedule and on a voluntary basis, other duties as assigned in addition to their normal work schedule to be determined on a case-by-case basis. Compensation shall be at the premium pay rate prorated on an hour per hour basis.**
- (c) **Effective the second pay period following Council approval of this MOU, a Fire Battalion Chief on a 56-hour schedule assigned to a 40-hour work week schedule for emergency fire suppression duties on a temporary basis shall be paid at the applicable base hourly rate for each hour worked in such assignment in excess of forty (40) hours. Excluded from such compensation are the following assignments.**
 - (1) **Attendance at staff meetings.**
 - (2) **Appearances at Civil Service hearings.**
 - (3) **Court appearances.**
 - (4) **Appearances at grievance or Skelly hearings.**
 - (5) **Fire Incident Holdovers which must be at least 2.5 hours in length.**
 - (6) **Administrative duties performed outside the temporary assignment as defined in Instruction No. 128, as may be modified by mutual agreement of the parties.**
- (d) **The Fire Battalion Chief permanently assigned to a forty (40) hour work week shall be entitled to Premium Pay under Section F., 1. (a) or (b) for working full or partial 24-hours shifts in addition to their normal work schedule. If recalled to be a part of the Incident Command Team on an emergency basis compensation will be paid at the applicable forty (40) hour base hourly rate for each hour worked in such assignment which must be at least 2.5 hours in length.**

[§ deleted]

2. Bilingual Certification Program

The bilingual certification program consists of a City administered examination process whereby employees may apply for a Summer and/or Winter bilingual examination, and if certified by the examiner receive bilingual premium pay for interpreting and translating. Bilingual premium pay is not pensionable **under the first or second tier of the City Fire and Police Retirement System.**

- (a) Bilingual certification examinations will be conducted two (2) times per year (Summer and Winter). During the examination noticing period, examination applications will be available at the **Personnel** Department, * * * Human Resources Division and City department personnel units.
 - (1) In order to qualify for the Summer examination, the application must be received by the Human Resources Division during the month of May, but no later than the last regular business day of May.
 - (2) In order to qualify for the Winter examination, the application must be received by the Human Resources Division during the month of November, but no later than the last regular business day of November.
 - (3) Bilingual examination application deadlines are not appealable or grievable.
- (b) Bilingual certification examinations are conducted for Cambodian, Hmong, Laotian, Sign, Spanish and Vietnamese languages.
- (c) The bilingual premium pay rate for certified permanent employees is fifty dollars (\$50) per month, regardless of how many languages for which an employee is certified.
 - (1) Certified employees may interpret/translate for departments/divisions they are not assigned to, provided the requesting department/division has a demonstrated customer service related need, and has obtained approval from the certified employee's supervisor.
 - (2) Certified employees shall not refuse to interpret/translate while on paid status. Refusal shall result in appropriate disciplinary action. Certified employees may be assigned to any incident

or investigation requiring their bilingual skills and may be required to prepare written reports related to the incident or investigation. The objective of this policy will be to utilize department resources in the most efficient way possible.

- (3) Except in the event of an emergency, bilingual employees who are not certified shall not be required to interpret/translate.

G. LEAVES

1. Holiday Leave

- (a) Employees shall accrue, at the 56 hour rate, 13 hours per month (this is equal to six and one-half (6.5) 24 hour working shifts) as holiday leave in lieu of the Holidays recognized in FMC Section 2-1513:

January 1.

The third Monday in January.

The third Monday in February.

The last Monday in May.

July 4.

The first Monday in September.

November 11.

Thanksgiving Day in November.

The Friday after Thanksgiving Day November.

December 25.

Employee's Birthday.

Two Personal Business Days.

Any day or part of a day declared by the Council, ordinance or resolution, to be a holiday.

If January 1, July 4, November 11 or December 25 falls upon a Sunday, the Monday following will be observed as the Holiday in lieu of Sunday.

- (b) Employees at the rank of Battalion Chief shall be allowed to draw vacation and holiday time in any configuration of hours or shifts, by rank, by departmental seniority subject to the provisions of FMC Section 2-1510.
- (c) Employees may request payment for any holiday leave balance.

2. **Vacation Leave**

- (a) **Employees shall accrue twenty-two (22) hours of vacation leave for each completed calendar month of employment.**
- (b) **No employee's vacation accumulation shall cease due to refusal by the City to grant vacation leave prior to the employee reaching the vacation accumulation limit applicable to the employee's position and length of service. In the event an employee requests in writing vacation leave one (1) month prior to the month in which the limit would be reached, and such request is refused, the Fire Chief or designee shall extend the employee's accumulation limit for ninety (90) days during which time the employee shall be scheduled for vacation leave sufficient to reduce the employee's balance below the accumulation limit.**

3. **Administrative Leave**

Employees shall receive 72 hours of administrative leave effective July 1 of each fiscal year. Upon their employment by the City, newly appointed employees shall be credited with six (6) hours of administrative leave for each full calendar month remaining in the fiscal year. Employees provisionally appointed shall receive six (6) hours of administrative leave for each full month of such provisional appointment. Employees may receive payment during the fiscal year only for the 72 hours of base administrative leave not taken. Any administrative leave not taken at the end of the fiscal year shall not carry over to the next fiscal year.

- 4. The Fire Chief may grant up to an additional **thirty-two (32) hours Administrative Leave to Fire Bureau Chiefs and Fire Battalion Chiefs** * *
* based on **an annual** * * * job performance **evaluation, as outlined in Article VII, Section K. The determination by the Fire Chief to grant administrative leave shall be made at the time the annual performance evaluation is completed, and credited to the employee on the anniversary date. In determining the number of hours to be awarded, the Fire Chief shall also consider the employee's extended work hours and attendance** * * *. Such * * * leave * * * **must be taken** * * * **within the** * * * **calendar year following the anniversary date upon which it was credited** * * *.
- a. **The administrative leave granted cannot be cashed in by employees.**

- b. **Employees not otherwise eligible for administrative leave who are provisionally appointed to permanent positions in classes eligible for administrative leave, and new employees, shall not be granted any part of this administrative leave.**

4. Sick Leave

Employees shall accrue sick leave at the rate of **twelve (12)** hours for each completed calendar month of employment, with unlimited accumulation. * * * **Unless otherwise modified, Instruction No. 34, shall apply as well as the FMC, City administrative orders, policies, procedures, rules and regulations concerning sick leave usage and administration * * *. In the event of any conflict, Departmental policies and Instruction No. 34 shall apply. * * ***

[§§ deleted]

5. Compensation for Unused Leave

Employees eligible to receive payment for any unused leave balances (i.e., holiday, administrative, sick and vacation) shall be compensated for such accumulated leave balances based on accumulations calculated on a **fifty-six (56)** hour (24-hour shift) basis.

6. Family Sick Leave

Employees assigned to a forty (40) hour work schedule shall be allowed up to forty-eight (48) hours of accrued sick leave per fiscal year for Family Sick Leave. Firefighters assigned to a fifty-six (56) hour work schedule shall be allowed up to seventy-two (72) hours of accrued sick leave per fiscal year for Family Sick Leave. Family Sick Leave shall be used only for those purposes defined in the California Labor Code. Use of Family Sick Leave shall be authorized and recorded by a department head or designee.

H. **ATTENDANCE/HEALTH INCENTIVE**

Effective upon Council approval of this MOU, a member of this Unit who enters Deferred Retirement Option Plan (DROP) shall have an amount equal to 50% of the number of the employee's remaining unused sick leave balance credited toward the computation of retirement benefits based on a fifty-six (56) hour workweek as if it were a one-time payment on the base rate of pay in effect at the time the option is exercised by the employee. Upon entering DROP, the employee will be required to make a corresponding pension contribution on this amount.

Employees already in DROP upon Council approval of this MOU, shall be credited the difference between the sick leave credit received upon entering DROP and the formula indicated above, and will be required to make a corresponding contribution for the difference.

At service retirement, employees in this Unit shall be compensated for only those unused sick leave balances in excess of 1680 hours at two dollars (\$2.00) per hour, computed at a fifty-six (56) hour workweek rate.

I. JURY DUTY AND COURT APPEARANCES

Jury Duty - With the permission of the Fire Chief or designee, an employee who is required to report for and does report for jury duty may not be required to report for regular duty prior to jury service if such report is impractical or would cause the employee to be late for jury duty. If the employee is required to report for jury duty on the day following a duty shift, the employee may be released up to one hour prior to the shift's end, if necessary, to assure timely attendance at jury duty. Employees in this Unit shall not be required to refund to the City any mileage reimbursement received as a result of jury duty.

Court Appearances - The payment of Court time/appearances shall be in accordance with FMC Section 2-1511.

J. ABSENT WITH RELIEF (AWR)

1. With the approval of the Fire Chief or designee, an employee may attend to Association or other personal matters by providing the City an off-duty employee of like rank to work for such absent employee. The City shall incur no additional liability due to such replacement nor shall the City assume any responsibility regarding "pay back" of such time. It shall be the duty of the employee to arrange for replacement and secure required approval not less than ten hours in advance of the requested absence. In cases of tardiness, the ten hour notice requirement will be waived. In the event of an emergency, the ten hours notice may be waived with approval of the Fire Chief or designee. Should an employee become ill while working an AWR, as outlined by Department policy, the employee shall make a diligent attempt to secure a replacement with an AWR. An ill employee becoming ill while working an AWR is eligible to use earned holiday or vacation leave to replace the AWR. Use of accumulated vacation and/or holiday leave, when an employee's sick leave is exhausted, is prohibited unless approved by the Fire Chief. An employee becoming ill between 2000 and 0800 hours is eligible use earned sick leave to replace the AWR. Such approval shall not be unreasonably withheld. An employee requesting approval of an AWR shall submit a document by which the substitute employee assigns to the City an amount of the employee's salary equal to the salary which will accrue to the requesting employee during the absence. Such assignment shall be executed by the City solely for that portion of the requesting employee's shift

which the substitute employee fails to work for any reason. In such event, the failure by the replacement employee to report or remain for duty shall not result in any loss of compensation to the requesting employee. No loss of compensation shall occur if the replacement provides a substitute employee of like rank during the absence. Approved AWR's shall not be revoked by the City.

2. No employee shall take an AWR for the purpose of other employment, self-employment included.
3. AWR's are governed by Fresno Fire Department Instruction No. 61, and may be modified by mutual agreement of the parties.

J. WORKERS' COMPENSATION

1. Notwithstanding the provisions of FMC Section 2-1515, an employee who suffers an injury/**illness** in the course and scope of City employment shall receive 85 percent of **base rate of pay**. * * *
 - (a) **Compensation for a work related injury or illness shall begin following the first three (3) days, or second twenty-four (24) hour shift, after the employee leaves work as a result of the injury or illness. However, this waiting period shall be waived and compensation shall begin on the first day of a work related injury or illness only if:**
 - (1) **the employee is hospitalized as an inpatient for at least twenty-four (24) hours; or,**
 - (2) **the employee is absent from work fourteen (14) days or more; or,**
 - (3) **the employee is placed on light duty at any time during the first three (3) days, or second twenty-four (24) hour shift.**
2. **Partial days of absence due to a work related injury or illness, including the day of injury or illness, shall be at full pay and shall not count toward the exclusion period; however, this time shall be recorded as work related injury/illness absence.**
3. At the employee's option, in the event **work related injury/illness** pay from the City is not provided during the first three (3) days of absence, **or by the second twenty-four (24) hour shift, due to the work related injury or illness, the employee may take sick leave, vacation, holiday, or compensatory time off (CTO) for that period.**

4. **If the employee opts to use sick leave, vacation, holiday, or CTO for the first three (3) days, or by the second twenty-four (24) hour shift, and it is later determined that work related injury/illness pay under paragraph 1.(a), above, beginning on the first day of a work related injury or illness is appropriate, the leave time shall be restored to the firefighter and the firefighter's pay or leave balance will be adjusted accordingly.**
5. **If the employee is placed on sick leave, vacation, holiday, or CTO pending determination as to whether the injury or illness is industrial, and the injury or illness is determined to be industrial, sick leave, vacation, holiday, or CTO shall be restored within thirty (30) calendar days of such determination provided that the employee has submitted all necessary documents relevant to their Workers' Compensation claim, and the employee placed on work related injury/illness leave as provided herein.**
6. **If the employee is placed on sick leave, vacation, holiday, or CTO pending determination as to whether the injury or illness is industrial, and the injury or illness is determined not to be industrial, sick leave, vacation, holiday or CTO shall not be restored.**
7. **Retirement benefits shall not be reduced as a result of compensation paid at the 85 percent rate level of compensation established herein. Changes in contribution by the City and employee shall be in accordance with the applicable retirement code sections.**
8. **Taxes shall not be withheld on compensation at the 85 percent rate which is paid due to an injury or illness sustained in the course and scope of employment with the City.** In the event Federal tax regulations are amended to include compensation received while absent due to injury or illness suffered in the course and scope of employment as taxable income, the provisions of subsection 1. above regarding salary shall be of no force and effect.
9. **Notwithstanding the provisions of the FMC, for the first sixty (60) days of absence in any fiscal year, benefits, including but not limited to holiday leave accumulation and uniform allowance, shall continue to accrue.**

K. EMPLOYEE PERFORMANCE EVALUATIONS

1. **Effective July 1, 2004, salary increases for employees occupying the class of Fire Bureau Chief in this Unit shall be granted based upon annual performance evaluations using the following graduated, performance-based merit plan table.**

OVERALL PERFORMANCE RATING CATEGORY	ASSOCIATED PERCENTAGE INCREASE	ADDITIONAL ADMINISTRATIVE LEAVE HOURS
Unsatisfactory/Needs Improvement	Zero Percent (0%)	0
Average	Zero Percent (0%)	0
Above Average	Three Percent (3%)	Up to 16
Superior	Four Percent (4%)	24 - 32
Outstanding	Five Percent (5%)	32

4. Annual performance evaluations shall be conducted prior to an employee's anniversary date in the current position by the Fire Chief, utilizing the City of Fresno Performance Evaluation Form (Attachment "A"), with the associated percentage increase becoming effective on an employee's anniversary date. An "outstanding" rating must include a justification to the City Manager or designee in the Comments Section of the Performance Evaluation Form.
5. An employee who has been subjected to formal disciplinary action consisting of suspension or demotion in the twelve (12) months preceding their annual performance evaluation will not be eligible for a salary increase regardless of the rating received. The results of an employee's annual performance evaluation rating is final and is not subject to an appeal process.

[§ moved]

L. SUPPRESSION SERVICE DELIVERY

The City intends for the members of this Unit to be the management providers of fire suppression (not including Fresno Yosemite International airport) to the City of Fresno. This does not preclude instant aid agreements, reciprocal or non-reciprocal aid agreements, or other interim measures to accomplish this intent, nor is it intended to restrict the ability of the City to determine the mission of its Fire Department.

Nothing herein is intended to restrict consultation in good faith with the Association regarding matter within the right of the City to determine.

M. AMERICANS WITH DISABILITIES ACT (ADA), FAMILY MEDICAL LEAVE ACT (FMLA), CALIFORNIA FAMILY RIGHTS ACT (CFRA) AND WORKPLACE VIOLENCE

The requirements mandated by these statutes have been established in City policies (Administrative Order manual and Injury and Illness Prevention Program handbook).

N. NO SMOKING POLICY AND DRUG/ALCOHOL TESTING

No smoking and drug and alcohol testing procedures have been established in departmental operational policies, and may be modified by mutual agreement of the parties.

O. HOURS OF WORK AND SCHEDULES

1. The workweek for the City begins on Monday at 12:01 a.m. and ends the following Sunday at midnight. The comparison of hours between a 5/8 and/or 4/10 with that of a **twenty-four (24)** hour schedule, or vice versa, utilizes a conversion factor of 1.5.

2. Workweek schedules are established by the department/divisions based upon the need to provide service to the public/other city departments.

3. For 5/8 and/or 4/10 schedules, position assignments by classification, staffing levels, workweek schedules, and days off are determined solely by management, and are subject to change based on varying workload, the addition of authorized staffing, and department operational and service needs.

(a) Employees temporarily/permanently assigned to perform administrative tours of duty are assigned by management to a 5/8 or 4/10 workweek schedule, or combination thereof. (Light duty is not considered a temporary/permanent administrative tour of duty.) Based on the needs of the service, an employee's work schedule may be modified with at least five calendar days written notice to the affected employees. In the event of an emergency, such work schedule may be modified with less notice.

As determined by the Chief or designee, employees assigned to assist with Firefighter Recruit Academy or School will be placed on a 5/8 schedule during this special training period of time.

(b) The hours for a 5/8 workweek consist of five, eight hour days with two consecutive days off. The hours for a 4/10 workweek consist of four, ten hour days with three days off, of which two of the days off will be consecutive. Scheduling of days off is determined by management.

- (c) Leave requests for all time off are processed utilizing a conversion factor of 1.5.

ARTICLE VIII

HEADINGS/REFERENCES/CITATIONS

A. HEADINGS

MOU article, provision, and paragraph headings (includes exhibits, addendums, attachments and side letters) contained herein are solely for the purpose of convenience, and shall not affect the construction or interpretation of any of the language of this MOU.

B. REFERENCES/CITATIONS

References/citations in this MOU (includes exhibits, addendums, attachments, and side letters) to any existing federal, state, or city ordinances, rules, regulations, policies, Administrative Order Manual, Personnel Manual sections and subsections thereof, Salary Resolution sections and subsection thereof, and side letters in no way incorporates said references/citations into this MOU, unless so noted.

ARTICLE IX

SAVING CLAUSE/FULL UNDERSTANDING

A. SAVING CLAUSE

In the event any article, section or portion of this MOU should be held invalid and unenforceable in any court of competent jurisdiction, such decision shall apply only to the specific article, section or portion thereof specified in the court's decision, and upon issuance of such a decision, the City and the Association agree to immediately meet and confer upon a substitute for the invalidated article, section, or portion thereof.

B. FULL UNDERSTANDING

It is intended that this MOU sets forth the full and entire understanding of the parties, and any previous understanding or * agreements *** by the parties * * * regarding all such matters are hereby superseded and terminated in their entirety. With respect to *** side letter *** agreements, any not attached to this MOU are hereby terminated in their entirety. Those side letter agreements attached to this MOU shall *** continue in force *** subject to the terms and conditions set forth *** within each side letter. In the absence of any specified term in any such side letter, they shall terminate upon the expiration of this MOU. Any side letter agreement entered into during the term of this MOU shall continue in force subject to the terms and conditions set forth in the side letter. This paragraph is not intended to prevent either party from relying on discussions which occurred during the meet and confer process for the purpose of clarifying the meaning of this MOU.**

C. Nothing in this Article shall be interpreted to mean that the parties waive any rights under the Meyers-Milias-Brown Act, Government Code Section 3500, *et. seq.*

ARTICLE X

TERMINATION

This MOU shall be in full force and effect from July 1, 2003, through June 30, 2005, subject to Sections (A. B., and C.) below.

- A. This MOU shall be effective only after ratification by the members of the Association, followed by City Council approval and the expiration of the waiting period for the Mayor's action provided in Charter sections 605 and 609, and shall remain in full force and effect through the 30th day of June, **2005 * * ***.
- B. During the term of this MOU, should either party desire to modify its terms or to meet and confer as to matters within the scope of representation **which are** not addressed in this MOU, the party requesting such modification shall request in writing to meet and confer on the item(s), which item(s) shall be specified in writing.
- C. During the term of this MOU, either party may refuse such request **by the other to meet and confer** without explanation if **(1)** the item is directly considered **and specifically addressed** herein; or **(2) is directly considered and specifically addressed in any FMC section, charter section or provision, or resolution section, which section specifically establishes wages, hours, or other terms and conditions of employment; or (3) * * *** the specific item was included in an **initial** written proposal from the party making the request during the meet and confer process which led to this MOU. It is further agreed, however, that this *** * *** **Article** shall not prohibit the *** * *** **parties** from requesting to meet and confer on changes to federal or state statutes referred to or cited in this MOU, in which case the request to meet and confer shall not be refused.

IN WITNESS WHEREOF, the parties hereto have set their hands this 21 day
of May, 2004.

FOR THE INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS:

Al Rush
AL RUSH
President

Tim Henry
TIMOTHY HENRY
Battalion Chief

Clyde R Clinton
CLYDE CLINTON
Fire Captain

Clay Rider
CLAY RIDER
President, IAFF Management Unit

~~TIMOTHY HENRY~~
~~Battalion Chief~~

FOR THE CITY OF FRESNO:

Adela Gonzalez
ADELA GONZALEZ,
PERSONNEL DIRECTOR

Jorge C. Aguiniga
JORGE C. AGUINIGA
Labor Relations Manager

Susan Derpinghaus
SUSAN DERPINGHAUS
Management Analyst III

Lori M. Najera
LORI M. NAJERA
Senior Human Resources Analyst

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

BY: [Signature]
Deputy City Attorney

EXHIBIT I
Fire Management - Unit 10

TABLE I Fire Management - Unit 10 Salaries - Effective July 1, 2003					
STEP	A	B	C	D	E
Fire Battalion Chief	6745	7054	7371	7653	7901
Fire Bureau Chief (E2 Range)		5600	–	10100	

TABLE II Fire Management - Unit 10 Salaries - Effective July 1, 2004					
STEP	A	B	C	D	E
Fire Battalion Chief	6720	7056	7408	7778	8166
Fire Bureau Chief (E2 Range)		5600	–	10100	



Employee Rated:

Title:

Current Position Anniversary Date:

Department:

CITY OF FRESNO
PERFORMANCE EVALUATION FORM (IAFF Mgmt Unit 10)

Rating Section

*Unsatisfactory/
Needs
Improvement

Average

Above Average

Superior

Outstanding

Trait

Use of Resources

Uses available resources effectively including staff, other City and non-City personnel, material and information on hand or available. Obtains maximum results from available resources.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Leadership

Directs, motivates, corrects, trains, and disciplines effectively. Inspires confidence through job knowledge and ability to motivate. Uses positive methods to achieve results through subordinates.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Quality of Work

Produces work that is comprehensive in scope, timely, and complete in detail. Produces work that is free from mistake or error.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Quantity of Work

Produces a quantity of work appropriate to the job.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Working With Others

Works well with subordinates, peers, supervisors, and the public; establishes an effective working relationship with representatives of other agencies and organizations.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Initiative

Is a self-starter and is not self-limiting. Acts independently without specific instructions; does not always require specific instructions.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Judgment

Understands and, to the extent possible, can determine the consequences of particular actions; ability to select the alternative leading to the desired consequence; good sense

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------	--------------------------	--------------------------	--------------------------

***Set/define/enumerate goals for improvement.**

Rater's Section

Disregarding the importance of the job in your department, this person's overall rating is:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------	--------------------------	--------------------------	--------------------------

**

Date _____ Rater _____ Title _____

****Requires justification to City Manager or designee under comments section.**

Employee Rated:

Title:

Current Position Anniversary Date:

Department:

Employee Section

I understand that my signature indicates that I have had the opportunity to review the completed form and the Department Director, or a designated representative, has discussed my appraisal with me. If applicable, I also understand the goals and objectives, as outlined in my evaluation; and I understand that, in part, my next rating on my evaluation will be contingent on meeting or making progress toward these goals and objectives.

Date _____ Signature _____

Department Director Review Section

This employee is prepared for:

(Circle choice)

Unprepared

Very
Prepared

More complex/challenging assignments

1 2 3 4 5

Promotion

1 2 3 4 5

Date _____ Signature _____

Comments Section

PERFORMANCE EVALUATION RATING CRITERIA

UNSATISFACTORY/NEEDS IMPROVEMENT

Needs to improve performance to demonstrate consistent satisfactory performance or is an unsatisfactory performer that will be given short notice to dramatically improve or face termination. A person with three or more “needs improvement” **and/or** “unsatisfactory” ratings would be in this category. The number and severity ratings would be used in determining the level of “notice.”

AVERAGE

Fulfills the performance requirements/expectations of the position. This person may have one or two correctable “needs improvement” ratings on his/her evaluation that would be reassessed after six months.

ABOVE AVERAGE

Usually exceeds job standards in fulfilling performance requirements with above average performance.

SUPERIOR

Consistently exceeds job standards and often demonstrates excellence in fulfilling performance requirements.

OUTSTANDING

Always exceeds job standards and consistently demonstrates excellence and outstanding ability in fulfilling performance requirements.